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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 EXXON MOBIL CORPORATION,

15 Petitioner and
16 Plaintiff,

17 v.

18 SANTA BARBARA COUNTY
19 BOARD OF SUPERVISORS,

20 Respondent and
21 Defendant,

22 and

23 ENVIRONMENTAL DEFENSE
CENTER, GET OIL OUT!,
24 SANTA BARBARA COUNTY
ACTION NETWORK, SIERRA
25 CLUB, SURFRIDER FOUNDATION,
26 CENTER FOR BIOLOGICAL
DIVERSITY, and WISHTOYO
27 FOUNDATION,

28 Intervenor.

Case No. 2:22-cv-03225-DMG (MRWx)

**PETITIONER/PLAINTIFF EXXON
MOBIL CORPORATION'S REPLY
BRIEF IN SUPPORT OF ITS
CROSS-MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION
TO RESPONDENT/DEFENDANT'S
AND INTERVENORS' MOTIONS
FOR SUMMARY JUDGMENT ON
FIRST CAUSE OF ACTION FOR
WRIT OF ADMINISTRATIVE
MANDATE**

Judge: Hon. Dolly M. Gee
Hearing: June 16, 2023
Time: 2:00 p.m.
Courtroom: 8C

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INTRODUCTION

ExxonMobil has an undisputed vested right to restart the Santa Ynez Unit. That right is hollow if ExxonMobil cannot get oil from SYU to market. For now, no pipeline is available, so trucking oil from the facility is the only option.

For nearly four years, ExxonMobil worked closely with County Staff to ensure that its application to truck oil from SYU to local refineries met—if not exceeded—all the County’s requirements. The Project called for strict mitigation measures, including the use of new trucks equipped with advanced safety features, handled by experienced drivers with extensive training and familiarity with the proposed route. And the restart of SYU would have brought substantial benefits to the County including low-carbon domestic oil, jobs, and millions in tax dollars.

The extensive Final SEIR, prepared by experts in their respective fields, analyzed every aspect of the Project—including risk of oil spills and impacts on traffic—for compliance with applicable environmental laws, regulations, and risk thresholds. It found that all the Project’s potential adverse impacts, save one, were *less than significant* with the mitigation measures in place. And that one unavoidable significant impact, the risk of an accidental oil spill from trucking, was mitigated to the *maximum extent feasible*. The Final SEIR estimated that, with the proposed mitigation measures, an oil spill might occur just *once in 17 years*. County Staff prepared a detailed report summarizing and further analyzing the Project for compliance. The Staff found that it complied with all relevant policies, and they recommended approval.

In short, the Board had everything it needed to approve the Project but rejected it. In doing so, the Board chose to brush aside the findings of its experts and the recommendations of its Staff to focus almost exclusively on inapposite evidence of accidents submitted by Intervenor. But that evidence says *nothing* about the Project or about the likelihood that trucks carrying oil from SYU with the mitigation measures would be involved in similar accidents. Apart from occurring

1 on the same routes, it lacks any connection to the Project and is silent on a host of
 2 factors—such as the qualifications of drivers or the quality of the trucks involved—
 3 that the Project’s mitigation measures address. Lacking these details, Intervenor’s
 4 accident evidence is not indicative of accidents that might occur under the Project
 5 and so cannot be grounds for the Board—or the Court—to find that the Project
 6 would be detrimental to the County or its citizens. That is not evidence—
 7 substantial or otherwise—that can support the Denial. If anything, the evidence
 8 shows that the Project’s mitigation measures make it safer than other oil trucking in
 9 the County, which the County and Intervenor concede is widespread today.

10 That the Board abused its discretion by myopically focusing on Intervenor’s
 11 evidence is not surprising. It provided the Board with a justification for the
 12 outcome that it wanted. The fact is, the Board did not reject the Project because it
 13 fell short of even a single County ordinance (it did not) or because it created
 14 unacceptable risk (it was within County capacity and risk thresholds). The Board
 15 rejected the Project because a majority of Supervisors do not like the oil industry
 16 and do not want ExxonMobil to restart SYU under any circumstances. As one
 17 County Supervisor said during the Board’s deliberations, “I think what I’m hearing
 18 is . . . there is no scenario where their project can be approved.” The Board’s *sub*
 19 *silentio* ban on the transportation of oil is also an abuse of discretion requiring that
 20 the Denial be set aside and that the Court enter an order requiring the Board to
 21 reconsider the Project.

22 ARGUMENT

23 I. **Because the Board’s Denial of the Trucking Permit Application Denies** 24 **ExxonMobil’s Fundamental Vested Right to Restart SYU, the Court** **Must Evaluate the Evidence Applying the Independent Judgment Test.**

25 ExxonMobil’s fundamental vested right to restart SYU is meaningless
 26 without a means to transport its oil to market. The Board’s decision to deny the
 27 Project forces SYU to remain shut-in unless and until a pipeline becomes available,
 28

1 and there is no timeline for when that might be.¹ Because a vested right is at stake,
2 the independent judgment standard applies. EM Mot. at 15–18.

3 The Board and Intervenors do not dispute that ExxonMobil has a vested right
4 to restart and operate SYU. 37-AR-014573, 014810. Nor do they dispute that SYU
5 remains shut-in because its oil cannot be transferred from the facility. 37-AR-
6 014648–49. Instead, they argue that ExxonMobil does not possess a vested right *to*
7 *transport oil by truck*—a “right” ExxonMobil never claimed—and that the right at
8 issue is not fundamental because the Denial has not put SYU out of business—yet.²
9 Bd. Reply at 2–8; Intvs. Reply at 2–8. Both arguments are premised on a myopic
10 misunderstanding of California law.

11 Whether an administrative decision substantially affects a fundamental
12 vested right is a case-by-case determination, and “no exact formula exists by which
13 to make this determination . . .” *301 Ocean Ave. Corp. v. Santa Monica Rent*
14 *Control Bd.*, 228 Cal.App.3d 1548, 1556 (1991). But the California Supreme Court
15 has provided guidance:

16 The essence to be distilled is this: **When an administrative decision**
17 **affects a right which has been legitimately acquired or is otherwise**
18 **‘vested,’ and when that right is of a fundamental nature from the**
19 **standpoint of its economic aspect or its ‘effect . . . in human terms**
20 **and the importance . . . to the individual in the life situation,’ then a**
21 **full and independent judicial review of that decision is indicated.**

22 ¹ Since SYU’s shut-in, ExxonMobil has continued to maintain, inspect, and monitor
23 the SYU platforms and facilities to ensure their integrity. 37-AR-014581; *see also*
24 EM Mot. at 4. Each year, the company spends tens of millions of dollars to
25 maintain the facilities and pays the County more than \$1 million in taxes. 37-AR-
26 014639. ExxonMobil has the undisputed vested right to restart production at SYU
at any time and is working to restore a means of transporting oil from LFC to
market. 37-AR-014573, 014810. The Project is a key component of those efforts.
EM Mot. 5–6; 37-AR-014807.

27 ² The issue here is not whether ExxonMobil, as a corporation, can continue to
28 operate its business in spite of the Denial, but what impact the Denial has on SYU’s
operations.

1 *Interstate Brands v. Unemployment Ins. Appeals Bd.*, 26 Cal.3d 770, 780 (1980)
 2 (quoting *Strumsky v. San Diego Cnty. Emps. Ret. Ass’n*, 11 Cal.3d 28, 34–45 (1974))
 3 (emphasis added)). This case meets that standard. ExxonMobil legitimately
 4 acquired the right to operate SYU over 30 years ago when, among other things, the
 5 County approved its Development Plan. And this right became even more concrete
 6 based on the substantial work and significant investments in the facility that
 7 ExxonMobil made over the decades. *See* 37-AR-014848–51. The Board nullified
 8 that right by denying the Project.

9 The Board and Intervenor attempt to reframe the scope of that right,
 10 suggesting that ExxonMobil has a right to restart SYU only to the extent that
 11 SYU’s oil can be transported via pipeline. Both argue that because ExxonMobil
 12 does not already possess a trucking permit, the Denial implicates no vested right.
 13 Bd. Reply at 4; Intvs. Reply at 3–4. But the Development Plan—one source of
 14 ExxonMobil’s vested right—explicitly provides that the facility’s oil can be
 15 transported by other means if a pipeline is *not* available and if local law is satisfied.
 16 37-AR-014810, 014821–22; *see also* EM Mot. at 5–6, 10, 13. And the California
 17 Supreme Court has made clear that the application of the independent judgment
 18 rule is not as rigid as the Board and Intervenor claim. *See Interstate Brands*, 26
 19 Cal.3d at 779 (“ . . . [the] concern [in *Bixby*] was directed toward providing a
 20 doctrinal basis through which [independent judgment] review could be extended to
 21 ‘decisions or classes of decisions’ which, although not involving vested property
 22 rights in the traditional sense, nevertheless had an impact on the individual
 23 ‘sufficiently vital . . . to compel a full and independent review’ by the court.”)
 24 (discussing *Bixby v. Pierno*, 4 Cal.3d 130, 143 (1971)).

25 Contrary to the Board’s and Intervenor’s assertion, a fundamental vested
 26 right can exist without a formal permit, as illustrated by *The Termo Co. v. Luther*,
 27 169 Cal.App.4th 394 (2008). There, the court held that the plaintiffs had a
 28 fundamental vested right in the continued operation of 28 oil wells even though a

1 permit granting a right to operate the wells had not been issued. *Id.* at 408. As the
 2 court noted, “[t]o argue that the issuance of a license or permit per se is outcome
 3 determinative is to elevate form over substance.” *Id.* The same is true of the Board
 4 and Intervenors’ insistence that a permit to truck is a prerequisite for applying the
 5 proper standard to protect ExxonMobil’s right to restart and operate SYU.³

6 Similarly, in *Goat Hill Tavern v. City of Costa Mesa*, the court held that the
 7 plaintiff had a fundamental vested right in the continued operation of his business
 8 despite the expiration of a conditional use permit for an expansion. 6 Cal.App.4th
 9 1519, 1527 (1992). “[T]he tavern’s original rights as a legal nonconforming use
 10 and its right to operate in the expanded capacity under the conditional use permit
 11 have become inextricably intertwined and denying renewal of the conditional use
 12 permit puts the tavern out of business.” *Id.* at 1526 n.3. Just as in *Goat Hill*
 13 *Tavern*, ExxonMobil’s right to restart and operate SYU is inextricably intertwined
 14 with its ability to transport processed oil to market, and denying the Project
 15 prevents ExxonMobil from continuing to operate SYU.

16 The Board and Intervenors next argue that the independent judgment test
 17 should not apply because the Denial implicates only economic interests—*i.e.*,
 18 ExxonMobil’s return on its use of the SYU property—and courts often find that
 19 “purely economic privileges” do not constitute a “fundamental” vested right. Bd.
 20 Reply at 4; Intvs. Reply at 5. Independent judgment review, they explain, is only
 21 available in land-use cases where an administrative decision prevents the continued
 22 operation of a preexisting legal business. Bd. Reply at 5–7; Intvs. Reply at 6–7.

23
 24
 25 ³ As the *Termo* court noted, oil is “an extraordinarily valuable resource, especially
 26 in the current economic era,” and the right to extract oil is “fundamental
 27 considering its potentially massive economic aspect and its considerable effect in
 28 human terms.” 169 Cal.App.4th at 407-08. The same was true when the Board
 denied the Project. See 1-AR-000091–93; 1-AR-000119–20. And it remains so
 today.

1 But that is exactly the case here: The Board’s Denial stops ExxonMobil from
2 restarting SYU—that is, from continuing to operate a preexisting legal business—
3 because it cannot transport its oil. EM Mot. at 17–18.

4 The Board and Intervenor’s criticize ExxonMobil’s reliance on *Goat Hill*
5 *Tavern* and *Termo* as misplaced because the administrative decisions in those cases
6 effectively put the plaintiffs out of business. Bd. Reply at 4–8; Intvs. Reply at 5–8.
7 Both contend that the independent judgment rule does not apply here because
8 ExxonMobil can—maybe, eventually—use a pipeline to transport SYU’s oil. Bd.
9 Reply at 5; Intvs. Reply at 7.⁴ They go on to assert that the circumstances here are
10 more akin to cases where administrative decisions increased the cost of doing
11 business or limited property use but stopped short of shutting down a business and
12 that the independent judgment rule should not apply. *See* Bd. Reply at 6–8; Intvs.
13 Reply at 5, 7–8. This contention fails for at least two reasons.

14 *First*, it misstates the law. In *Interstate Brands*, the Supreme Court flatly
15 rejected the proposition that fundamental vested rights “only [exist] in such cases
16 where . . . [the administrative decision] would operate to drive the particular
17 employer out of business.” 26 Cal.3d at 777. And even the cases the Board and
18 Intervenor’s cite acknowledge that “the independent judgment test is applied to
19 review administrative decisions that will drive an owner out of business *or*
20 *significantly injure the business’s ability to function.*” *Amerco Real Est. Co. v. City*
21

22 ⁴ The Board and Intervenor’s conveniently avoid acknowledging that there continues
23 to be uncertainty as to whether a pipeline will ever come back online. An
24 application to replace the pipelines—filed six years ago—remains in limbo. *See*
25 EM Mot. at 4. And on April 26, 2023, the Planning Commission denied
26 ExxonMobil affiliate PPC’s request for permission to install 16 new safety valves
27 on Lines 901 and 903 in order to comply with a state law requiring pipeline
28 operators to install the “best available technology” on existing pipelines in the
coastal zone to reduce the amount of oil released in an oil spill. PPC appealed that
decision to the Board of Supervisors on May 8, 2023. *See*
<https://www.readysbc.org/880/901903-Valve-Upgrade>.

1 of *W. Sacramento*, 224 Cal.App.4th 778, 784 (2014) (emphasis added); *see also*,
2 *e.g.*, *JMS Air Conditioning & Appliance Serv., Inc. v. Santa Monica Cmty. Coll.*
3 *Dist.*, 30 Cal.App.5th 945, 960 (2018) (“Purely financial effects . . . affect
4 ‘fundamental’ rights . . . when an administrative decision imposes ‘operating
5 conditions [that] *severely impair [a company’s] ability to function* or . . . drive [the
6 company] out of business.”) (emphasis added).

7 *Second*, it misses the point. ExxonMobil sought a trucking permit in 2017
8 because there was no pipeline available. 37-AR-014567, 014569–70. The Project
9 is essential to safely restart SYU and the continuation of SYU’s operations until a
10 pipeline becomes available. 37-AR-014807. A pipeline is still not available. The
11 Denial does not merely impair ExxonMobil’s ability to restart and continue to
12 operate SYU; it makes it impossible. EM Mot. at 17–18. Thus, the Court should
13 apply the independent judgment rule.

14 **II. Regardless of Which Standard the Court Applies, the Evidence Shows**
15 **the Board Abused Its Discretion in Denying the Project.**

16 No matter which standard of review the Court applies, the evidence in the
17 record compels a finding that the Board abused its discretion by denying the
18 Project.⁵ Under the independent judgment standard, the Court “exercises its
19 independent judgment upon the evidence disclosed in a limited trial de novo.”
20 *Bixby*, 4 Cal.3d at 143. An “abuse of discretion is established if the court
21 determines that the findings are not supported by the weight of the evidence.” Cal.
22 Civ. Proc. Code § 1094.5(c). If the Court applies the substantial evidence standard,
23 an abuse of discretion is found if the findings are not supported by the substantial
24

25 ⁵ Tellingly, the Board and Intervenor do not even attempt to engage with an
26 analysis of the evidence test under the independent judgment standard. Intervenor
27 contend that their focus on the substantial evidence standard “aligns with the Joint
28 Report.” Intvs. Reply at 3. However, the “Synopsis of Principle Issues” section
clearly states that “ExxonMobil has a vested right to restart and operate SYU...”
Dkt. No. 16 at 2.

1 evidence in light of the whole record. *Id.* Even under this more lenient test, the
2 Court still must consider both the supporting and contrary evidence in the record
3 and weigh the evidence to “fairly estimate [its] worth.” *Lucas Valley Homeowners*
4 *Ass’n v. Cnty. of Marin*, 233 Cal.App.3d 130, 141–42 (1991).

5 The Board’s task was to evaluate if the Project complied with applicable laws
6 and whether the evidence supported the required findings for approval. The Project
7 met all applicable requirements, including the at-issue provisions of the LUDC and
8 CZO. EM Mot. at 6–10, 18–32. Nevertheless, the Board chose to deny the Project,
9 ignoring evidence from the Staff Report and Final SEIR—including the County’s
10 own safety thresholds—and instead relied on general policy statements and public
11 commentary to support its conclusion that the Project was purportedly too
12 dangerous to approve. That is an abuse of discretion, which requires the Court to
13 set the Denial aside. *See Gabric v. City of Rancho Palos Verdes*, 73 Cal.App.3d
14 183, 200 (1977) (city’s denial of a permit was not supported by the evidence
15 because, *inter alia*, all zoning and related laws had been satisfied); *Martinez v. City*
16 *of San Diego*, 4 Cal.Rptr.2d 753, 759 (1992), ordered not to be officially published
17 (May 21, 1992) (city’s denial of a development permit was unsupported in part
18 because there was no evidence in the EIR showing substantial negative impacts).

19 The actual evidence the Board and Intervenors rely on shows only that tanker
20 truck accidents resulting in oil spills have happened along the affected routes. Bd.
21 Reply at 10, 14–15; Intvs. Reply at 9, 11. That evidence does *not* show that the
22 Project, with its numerous mitigation measures and higher safety standards, would
23 have the same result. *Banker’s Hill, Hillcrest, Park W. Cmty. Pres. Grp. v. City of*
24 *San Diego*, 139 Cal.App.4th 249, 274 (2006) (rejecting public comments that did
25 not show the project “*will produce a particular adverse effect*”). Nor does it
26 provide the necessary details to enable the Board—much less this Court—to draw
27 that conclusion. *Topanga Ass’n for a Scenic Cmty. v. Cnty. of Los Angeles*, 11
28 Cal.3d 506, 515 (1974). And the Board cannot justify its Denial by demanding that

1 ExxonMobil meet standards for the Statement of Overriding Considerations that *no*
2 project could hope to meet. *Chalk v. U.S. District Court*, 840 F.2d 701, 707–08
3 (9th Cir. 1988) (finding that the agency “improperly placed an impossible burden of
4 proof on the petitioner”).

5 **A. The Evidence Shows That the Project’s Impact on the Streets and**
6 **Highways Would Be *Less Than Significant*.**

7 The record makes clear that the net cumulative increase in crude oil trucks
8 using State Route 166 would be about nine trucks per day, or “less than one truck
9 per hour.” EM Mot. at 20.⁶ Neither the Board nor Intervenor explains how this
10 warranted a finding that the streets and highways were not adequate or properly
11 designed for the Project. Nor does either address the Final SEIR’s findings that the
12 Project’s cumulative impact on traffic and oil truck accidents along Route 166
13 would be “*less than significant*.” *Id.* at 21. And both ignore the fact that the
14 Project would not exceed applicable safety and capacity thresholds for the affected
15 routes. *Id.* at 21–23. In an effort to undermine these facts, the Board and
16 Intervenor offer several arguments. None is availing. Instead, they demonstrate
17 that the Findings for Denial failed to “bridge the analytic gap between the raw
18 evidence and [the Board’s] ultimate decision.” EM Mot. at 34 (quoting *Topanga*
19 *Ass’n*, 11 Cal.3d at 515).

20 The Board asserts that the findings in Section 4.5 of the Final SEIR should be
21 dismissed because “major portions” were based on the 2019 traffic study prepared
22 by Association of Transportation Engineer (“ATE”), based on data from 2018 or
23 _____

24 ⁶ The Board and Intervenor focus on—and often repeat—that the Project would
25 put up to 78 trucks per day on the affected routes. Bd. Reply at 9–11; Intvs. Reply
26 at 8. While technically accurate (the Project sought authorization for up to 68
27 trucks per day, with 78 allowed only for catch-up trips following rainy days when
28 no trucking would be allowed, 37-AR-014571), both ignore the fact that SMPS’s
closure would decrease the number of trucks on the routes, such that the Project
would cumulatively only add nine additional trucks per day. 38-AR-015121–22.

1 earlier. Bd. Reply at 9–10. But, they point to no evidence in the record indicating
2 that traffic along the affected routes at the time of Denial was materially different,
3 let alone worse, than it was during the years evaluated by ATE or County Staff and
4 Caltrans. Without such evidence, the Board is left with nothing but its own
5 conjecture—and that is not enough to justify disregarding the Final SEIR.

6 The Board also argues that it necessarily “considered Section 4.5” because it
7 selectively cited that section in its Findings for Denial. Bd. Reply at 10. But those
8 selective citations show that the Board misinterpreted the Final SEIR’s findings.
9 According to the Findings for Denial: “Existing accident rates on certain segments
10 of Highway 101 and State Route 166 within the project area are currently above the
11 state average (*see* SEIR page 4.5-7), and the project would add an additional risk
12 for accidents above these existing conditions (SEIR Section 4.5 pages 20-22).” 1-
13 AR-000012. The Final SEIR reached the *opposite* conclusions. In fact, the part of
14 Section 4.5 that the Board cited in its Findings states that “the proposed Project
15 would *not* result in an exceedance of any of the roadway capacities, *nor* would the
16 proposed Project result in a substantial increase in traffic on any of the project
17 roadways.” 38-AR-015107 (emphasis added). Section 4.5 goes on to find that the
18 implementation of the RISK-1 (Truck Hazard Plan) mitigation measures “would
19 reduce the likelihood of an oil truck accident by about 33%,” making the Project’s
20 impact on potential accidents “less than significant.” 38-AR-015107–09; *cf.*
21 *Martinez*, 4 Cal.Rptr.2d at 759 (finding that there was not substantial evidence to
22 support denial of permit where “such risks are insignificant in light of the
23 mitigation measures described in the EIR”). Neither the Board nor Intervenors cite
24 *any* evidence demonstrating that the Project’s additional trucks would fall outside
25 the acceptable ranges discussed in the Final SEIR.⁷

26
27 ⁷ The Board also notes that “Section 4.5 of the SEIR does not discuss or analyze
28 specific oil tanker accidents.” Bd. Reply at 10. That is because those specific risks
are addressed by Section 4.3 of the Final SEIR, discussed *infra* § II.B.

1 In short, the weight of the evidence demonstrates that the affected routes are
2 adequate and properly designed for the Project. And there is no substantial
3 evidence in the record that could allow the Board or this Court to find otherwise.

4 **B. The Evidence Shows That the Project Would Not Be Detrimental**
5 **to the Safety of Impacted Neighborhoods Because the Incremental**
6 **Risk of Oil Spills Was Mitigated to the *Maximum Extent Feasible***
and Falls Within the County’s Risk Thresholds.

7 To determine whether the Project met the “detrimental to the comfort,
8 convenience, welfare, health, and safety” requirements of LUDC Section
9 35.82.080.E.1(e) and CZO Section 35-174.7.1(e), the Board needed—but failed—
10 to heed the County’s policies. Specifically, it needed to analyze the Project in the
11 context of the County’s requirements for non-pipeline transportation of oil—LUDC
12 Section 35.52.060.B.10.b and CZO Section 35-154.5(i)—and the County’s existing
13 safety thresholds.⁸ See EM Mot. at 21, 32–33, 35–36. But the Board did not
14 consider those factors. Had it done so, the evidence would have demanded a
15 different outcome. The Final SEIR found that risk of oil spills associated with the
16 Project had been mitigated to the *maximum extent feasible* and was within the
17 County’s acceptable risk range. *Id.* at 21, 27. This undisputed evidence
18 demonstrates that the Board’s Denial was arbitrary and not supported by the
19 evidence.

20 The Board failed to consider the mitigation measures and how they would
21 minimize the Project’s single Class I impact—the risk of an accidental oil spill
22 from trucking—to the “maximum extent feasible.” EM Mot. at 25–27, 33–34. The
23 Board and Intervenors continue to ignore this fact in their briefs. The Board argues
24

25 ⁸ The Board essentially concedes that the Project satisfies the requirements of
26 LUDC Section 35.52.060.B.10.b and CZO Section 35-154.5(i), the local laws
27 authorizing transportation by means other than pipeline. See Bd. Reply at 12
28 (“Meeting that requirement [of CZO 35-154.5(i)(2)] did not require approval of the
project.”).

1 that ExxonMobil cannot control other drivers or road conditions. Bd. Reply at 12.
2 And Intervenor point out that many of the tanker truck accidents along proposed
3 routes “were caused by external factors.” Intvs. Reply at 9. However, neither
4 actually analyzes the Truck Hazard Mitigation Plan, which addressed these
5 concerns and distinguishes the Project from other ongoing trucking of oil in the
6 County. *See* EM Mot. at 24–26; 38-AR-015028-29 (requiring, among other things,
7 extensive driver training, trucks with roll stability control system and dual-side
8 dashboard cameras, integrated satellite tracking and mapping systems, and regular
9 safety inspections).

10 Trucks transport oil along the proposed Project route today, just as they have
11 for decades. Indeed, most of the oil producers in the County transport their oil to
12 market by truck. 1-AR-000152. In other words, the Project was not a binary
13 choice of whether oil trucking would occur in the County. The Board and
14 Intervenor do not dispute this fact (e.g., Intvs. Reply at 13), yet fail to recognize its
15 salience to the present Project in which the Board singled out ExxonMobil based on
16 purported traffic safety and environmental risks without substantial evidence of the
17 Project meaningfully increasing such risks. Although it is impossible to entirely
18 eliminate the risk of a trucking accident, the County has not passed a law banning
19 trucking of oil and, thus, must accept some level of risk. The existence of some
20 risk—in this case *once in every 17 years*, 38-AR-015022, cannot, on its own, serve
21 as a justifiable basis to deny the Project.⁹

22 In fact, the County has adopted a rubric for assessing the acceptable level of
23 risk discussed in Section 4.3—Hazardous Materials and Risk of Upset—of the
24 Final SEIR. These thresholds are used to “determine the potential level of public

25
26 ⁹ Intervenor take issue with Section 4.3’s findings regarding the probability of
27 accidents, asserting that the risk is actually an accident “every two and a half
28 years.” Intvs. Reply at 11. Again, they miss the point by relying on *other*
accidents. Section 4.3’s specifically calculated the risk of accidents *involving*
Project trucks and factored in its mitigation measures. 38-AR-015014-22.

1 safety impacts from the risk of upset events . . .” 38-AR-015010-11; Bd. Reply at
2 10. The Final SEIR shows that the risk profile for the Project—individually and
3 cumulatively—falls within the County’s acceptable range. 38-AR-015010-13,
4 015020, 015037; *see also* 38-AR-015014-39; EM Mot. at 21 (Figure 4.3-13).
5 Neither the Board nor Intervenors dispute this. Nor do they provide evidence or
6 argument that the four additional truck accidents identified by Intervenors would
7 push the Project’s risk profile beyond the County’s acceptable thresholds.

8 The Board and Intervenors argue that the Board had discretion in
9 determining whether to grant or deny the Project. *See* Bd. Reply at 13; Intvs. Reply
10 at 16.¹⁰ But that discretion has limits and does not give the Board free rein to select
11 which evidence to consider and which to ignore. Cal. Civ. Proc. Code § 1094.5(c).
12 This kind of selective discretion would allow the Board to make permitting
13 decisions based on its members’ whims rather than on the record as a whole, an
14 arbitrary process that could unfairly deprive applicants of their property rights. *See*
15 *Martinez*, 4 Cal.Rptr.2d at 758 (holding that ambiguous phrases like “adversely
16 affect” in a city ordinance must be interpreted narrowly to avoid unfairly depriving
17 property owners of their expectant rights and reversing denial on that ground).

18 The interpretation of the LUDC and CZO is a question of law to be decided
19 by this Court. *See id.* (citing Cal. Evid. Code § 310(a)). Here, the “not detrimental
20 to the comfort, convenience, welfare, health, and safety” requirements of LUDC
21 Section 35.82.080.E.1(e) and CZO Section 35-174.7.1(e) should be read narrowly
22 and in the context of the County’s requirement that impacts of non-pipeline
23 transportation be “mitigated to maximum extent feasible”—LUDC Section

24
25 ¹⁰ Intervenors claim that ExxonMobil only partially quotes from the Coastal Land
26 Use Plan, which provides that the County “*should* assure that producers have access
27 to competitive markets.” Intvs. Reply at 16. Not so. ExxonMobil included the
28 allegedly missing text in its Motion, EM Mot. at 5, and further attached the full text
in its Request for Judicial Notice, Ex. A at 66–67.

1 35.52.060.B.10.b and CZO Section 35-154.5(i)—and the County’s existing safety
2 thresholds. *See Martinez*, 4 Cal.Rptr.2d at 758. So properly interpreted, the Denial
3 cannot be supported by the weight of the evidence or substantial evidence standards
4 and constitutes an abuse of discretion.

5 **C. The Evidence of Actual Accidents the Board and Intervenors Rely**
6 **on Is Not an Appropriate Substitute for the Data Evaluated by**
7 **County Staff.**

8 The Board and Intervenors contend that this Court should brush aside the
9 findings in the Staff Report and Final SEIR—findings reached after four years of
10 review—in favor of the accident descriptions provided by Intervenors.¹¹ Bd. Reply
11 at 11, 14–15; Intvs. Reply at 9, 11. But that information on its own—and lacking
12 any analysis connecting it to the Project—is *not* sufficient to support the Board’s
13 Denial. As the *Banker’s Hill* court recognized, project opponents must produce
14 evidence “that a project will *produce a particular adverse effect*.” 139 Cal.App.4th
15 at 274 (citing *Ass’n for Prot. etc. Values v. City of Ukiah*, 2 Cal.App.4th 720, 735–
16 36 (1991)). Here, as in *Banker’s Hill*, Intervenors’ accident descriptions may
17 provide evidence of the nature of the affected routes, but it does not support a
18 conclusion that the Project would necessarily exacerbate these conditions,
19 especially given the robust mitigation measures proposed.

20 Indeed, there is *no* evidence in the record that trucks involved in these
21 accidents were subject to any particular safety measures, much less to the same or

22 ¹¹ The Board and Intervenors argue that ExxonMobil places too much emphasis on
23 the Staff Report and its recommendation to approve the Project because they are not
24 the decision makers. *See* Bd. Reply at 13–14; Intvs. Reply at 11–12. While the
25 ultimate determination whether or not to approve the Project lay with the Board, the
26 Staff and the experts who worked on the Final SEIR, 38-AR-015227-28, are the
27 local bodies that spent years evaluating the proposed Project and working closely
28 with ExxonMobil to design mitigation measures. Their findings should not be
dismissed so lightly. *See Bank of Am. v. State Water Res. Control Bd.*, 42
Cal.App.3d 198, 213 (1974) (noting that expert agency analysis is “entitled to great
weight”); *Martinez*, 4 Cal.Rptr.2d at 759.

1 even similar stringent mitigation measures outlined in the Project's Truck Hazard
2 Mitigation Plan. Information about these accidents in the record is scant:

- 3 • **September 13, 2016** – crash involving oil tanker truck and semi-
4 tractor trailers along Route 166. 3-AR-000870; 57-AR-025305.
- 5 • **May 20, 2018** – accident involving sedan crashing into oil tanker truck
6 on Route 166. 3-AR-000871; 57-AR-025304-05, 025309.
- 7 • **December 12, 2018** – pickup truck crashed into oil tanker truck on
8 Route 166. 57-AR-025305; 025309.
- 9 • **March 21, 2020** – oil tanker truck overturned down an embankment
10 along Route 166, considered in Section 4.3 with additional mitigation
11 measures added to support spill response. 3-AR-000871; 37-AR-
12 014574; 38-AR-014974-014979, 015028-015032; 57-AR-025310; EM
13 Mot. at 26-27.¹²

14 These summaries generally include no information about numerous factors that the
15 Project's mitigation measures sought to address. *See* EM Mot. at 34. For instance,
16 they include no information about the companies involved (none of which were
17 ExxonMobil), driver experience, training, familiarity with the road, or traffic
18 conditions; nothing about the make and model of trucks involved or the technology
19 they were equipped with; and nothing about the involvement of drugs or alcohol.
20 Without this additional information, the Board had no way of comparing the factors
21 that led to these accidents to the mitigation measures included in the Project.
22 *Topanga Ass'n*, 11 Cal.3d at 515.

23 This cherry-picked evidence, lacking any context, does not support the
24 Denial. And contrary to the Board's and Intervenor's arguments, Bd. Reply at 10–

25
26 ¹² While the Intervenor's reference additional accidents as evidence to support the
27 Board's Denial (Intvs. Reply at 9–10), ExxonMobil focuses on these four accidents,
28 which the Board relied on in coming to its decision. Bd. Reply at 14–15; 1-AR-
000012-13. In any event, consideration of Intervenor's accidents does not impact
the analysis, as they suffer from the same dearth of information.

1 11; Intvs. Reply at 11, it provides no basis for concluding that consideration of
2 these accidents would push the Project outside of the County’s safety thresholds.
3 *See supra* §§ II.A–B. The Court should consider all of the information before the
4 Board—information that, when considered as a whole, supports the finding that the
5 Board should have approved the Project. EM Mot. at 20–27.

6 **D. The Board Abused Its Discretion by Applying Impossible-to-Meet**
7 **Standards in Evaluating the Project’s Overriding Considerations.**

8 The Board also erred by arbitrarily demanding that the Project’s minimal
9 risk—an estimated *one spill in 17 years*—be offset by an immense economic or
10 environmental windfall that no project could hope to provide. *Cf. Chalk*, 840 F.2d
11 at 707–08. The Board’s expectations of the Project’s benefits are even more
12 nonsensical given that the trucking was only proposed to continue for a maximum
13 of seven years. 37-AR-014802. At that point, if not earlier due to the availability
14 of a pipeline, ExxonMobil could restart its operations at full capacity, bringing back
15 additional jobs and contributing increased taxes and oil production to the County
16 and State. Moreover, the Board looked beyond the record before it and determined
17 that it could only approve the Project if it would substantially improve the
18 environment or economy in the County. *See, e.g.*, 1-AR-000167, 170–71, 182; Bd.
19 Reply at 17–18.

20 First, the Board argues that the Project would have only a “small impact” on
21 California’s energy independence because it would produce less than one percent of
22 the crude oil usage in California. Bd. Reply at 17. Putting aside all of the benefits
23 of California-produced oil over foreign crude, Mot. at 28–29, the notion that the
24 Project is too small to justify its risks turns the Board’s position on its head. If this
25 notion were true, then it would stand to reason that the Board would be more likely
26 to approve the Project if SYU produced *much more oil* and thus required even more
27 truck trips. Put another way, the Board claims to believe that the Project would risk
28 spilling too much oil but, at the same time, it would produce too little to care about.

1 The Board cannot have it both ways.

2 Second, the Board minimizes the benefits that the Project would bring to the
3 community by bringing back jobs and increasing expenditures at local businesses.
4 EM Mot. at 29–31. The Board argues that there is no evidence that SYU’s shut-in
5 has affected school closures or County services and that ExxonMobil has cited no
6 evidence of the “dire need for jobs or tax income” in the interim between 2022 and
7 2029. Bd. Reply at 17. But approval of this or any other project should not hinge
8 on whether an applicant can show that the County is in a perilous fiscal or
9 employment position. ExxonMobil presented evidence of public comments
10 expressing County residents’ personal negative experiences as a result of the shut-
11 in. EM Mot. at 30. Since SYU was shut-in, employment at the facility has been
12 reduced by 75%. 1-AR-000093–94. Reopening the facility could bring back up to
13 250 employees for ExxonMobil’s operations and up to 30 construction and trucker
14 jobs. 1-AR-000073, 000148, 000162; 37-AR-014639–40, 014861, 014884. And
15 evidence in the record shows that in 2014, during SYU’s full operation, the County
16 benefited from millions of dollars in expenditures. 37-AR-014338. Increasing jobs
17 and expenditures would have *some* benefit to the community, particularly now,
18 after a pandemic that adversely impacted local businesses and industries. 1-AR-
19 000124. And these were just some of the Project’s many benefits.

20 Finally, the Board questions how ExxonMobil’s contributions to the Coastal
21 Resource Enhancement Fund (“CERF”) outweighs eliminating the risk of accident
22 by denying the Project. Bd. Reply at 18. Again, the Board fails to recognize that
23 the CERF is one of several benefits that must be considered as a whole, alongside
24 other benefits not discussed in the Board’s Reply, like the additional tax revenue to
25 the County. EM Mot. at 31–32. In doing so, the Board misconstrues
26 ExxonMobil’s argument, which is that the benefits *collectively* are worth the
27 minimal risk of accident, especially in light of the Project’s suite of mitigation
28 measures.

1 **III. The Record Demonstrates That the Board Failed to Proceed in the**
2 **Manner Required by Law.**

3 In denying the Project, the Board effectively—and improperly—
4 implemented a policy that bans oil production and transport in the County. Though
5 the Board asserts that ExxonMobil has provided no factual support for that
6 argument, Bd. Reply at 18, Supervisor Nelson not only agreed but also addressed
7 this issue directly at the hearing. *See* EM Mot. at 38. Recognizing that
8 ExxonMobil complied with all applicable requirements, he questioned how the
9 Board’s use of discretion in this case differed from a policy to ban oil: “I think what
10 I’m hearing is that, um, there is no scenario where the project can be approved.” 1-
11 AR-000176. Supervisor Nelson went so far as to suggest that the County pass an
12 ordinance rejecting applications that include any risk of oil spills or similar hazards,
13 saying that, although he would not support such a policy, doing so “would be an
14 honest process for us to do in this county.” *Id.*; *cf. Martinez*, 4 Cal.Rptr.2d at 753,
15 761 n.2 (noting that if the City wanted to prohibit projects based on particular
16 factors, it should adopt an ordinance with objective standards by which a project
17 can be evaluated to avoid arbitrary decisions on granting or denying permits).

18 Other Board members struggled and ultimately failed to provide Supervisor
19 Nelson with a satisfactory response to his suspicion about the Board’s true
20 motivation in denying this application. Indeed, none of the Board members who
21 voted for the Denial were able to identify what more ExxonMobil could have done
22 to get its permit approved. *See* 1-AR-000178-80 (Vice Chair Williams admitting
23 that “with two attempts attempted to try to answer your basic question . . . I think
24 we’re going down a rabbit hole”). And, Supervisor Lavagnino recognized that the
25 current Board simply will not approve oil projects. *See* 1-AR-000179 (“Do we just
26 ban . . . do we put something out there that says . . . there’s no sense applying . . .
27 because there’s, uh a ban, which I think is different than having a board that has a
28 difference of opinion . . .”).

1 A blanket refusal to approve oil projects is not a discretionary choice but a
2 legislative policy. And legislating through administrative decisions constitutes an
3 abuse of discretion for failing to proceed in a manner required by law. *See Gabric*,
4 73 Cal.App.3d at 192. Both the Board and Intervenors attempt to differentiate
5 *Gabric* from the present case by arguing that (1) the Board has discretion to deny
6 ExxonMobil's permit, (2) ExxonMobil failed to show that the Board ignored or
7 misapplied any laws, and (3) the Board's decision relied on existing ordinances and
8 evidence in the record. *See Bd. Reply* at 18–19; *Intvs. Reply* at 15. These
9 arguments have no bearing on the *Gabric* court's reasoning. There, "the City
10 denied appellant Gabric a building permit not because appellant failed to meet any
11 zoning or building requirements or failed to comply with the law, but because the
12 City was contemplating the future adoption of a new zoning ordinance." *Id.* at 190.

13 There, as here, the court found that the City could not legislate through its
14 decisions in its quasi-judicial administrative role. *Id.* at 192. The County's policy,
15 plan, code, and ordinance authorizing the transportation of oil by means other than
16 a pipeline are not in place to sanction a potential ban on oil or its transportation.
17 *See EM RJN Exs. A–C.* Rather, they represent the balance between the County's
18 preference for pipelines, its policy imperative to "assure that producers [of oil] have
19 access to competitive markets," RJN Ex. A at 66–67, 70, and its environmental
20 concerns by requiring that such impact be "mitigated to the maximum extent
21 feasible," RJN Ex. B at 9–6; Ex. C at 5–13. They establish the criteria the Project
22 must meet, so the Board must judge the Project according to their standards and
23 other applicable law, not according to Supervisors' personal interests and biases.

24 The Board's attempt to minimize the evidence of bias in public comments
25 made by Supervisors Williams, Hart, and Hartmann is unpersuasive. *See Bd. Reply*
26 *at 19–20; see also Intvs. Reply at 14–15.* Rather than simply address the issue
27 before them—whether the Project could be approved—these Supervisors postured
28

1 about broader political issues before ultimately stating their decision.¹³ Each of
2 these individuals took time on the record to express their concerns about the
3 environment and the oil industry. Though the Board may not have included such
4 considerations in its Findings for Denial, it is clear from these Supervisors'
5 statements that they played a central role in the Denial. And the Findings for
6 Denial itself began with broader concerns under its Statement of Overriding
7 Considerations, which the Board and Intervenors now try to wave away as
8 gratuitous and irrelevant. Intvs. Reply at 1–2, 15 fn. 2.

9 CONCLUSION

10 For the foregoing reasons, ExxonMobil respectfully requests that this Court
11 grant summary judgment on its First Cause of Action for Petition for Writ of
12 Administrative Mandate, set aside the Denial of ExxonMobil's trucking Project,
13 and order the Board to reconsider the Project in light of the Court's opinion and
14 judgment, all requirements of CEQA, and all other applicable state and local
15 policies, plans, laws, codes, ordinances, and regulations.

18
19 ¹³ ExxonMobil cited two cases for the proposition that “[w]here an administrative
20 body’s decision is alleged to be politically motivated, courts may inquire into
21 whether the hearing process was fair and whether that body abused its discretion.”
22 EM Mot. at 36 (citing *Jones v. City of Orange Cove*, 454 F.App’x 601, 603 (9th
23 Cir. 2011); *Harrison v. City of Davis*, 16 Cal.App.5th 420, 435 (2017)).
24 Intervenors argue that *Jones* is irrelevant because the court did not address the
25 plaintiff’s claim of political motivation. However, *Jones* makes clear that courts
26 should consider allegations of this type seriously. *See* 454 F.App’x at 603
27 (considering that the writ “allege[d] that the City Council’s decision was politically
28 motivated, reasonably prompting an inquiry into whether her trial was fair and
whether the City Council abused its discretion”). Intervenors also argue that
Harrison is misapplied because the plaintiff failed to prove evidence of political
motivation. Intvs. Reply at 14–15. Here, the Board’s own comments provide
evidence of political motivation.

1 Dated: May 31, 2023

Respectfully submitted,

2
3 By: /s/ Dawn Sestito
4 Dawn Sestito

5 Attorneys for Petitioner and Plaintiff
6 Exxon Mobil Corporation
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner/Plaintiff Exxon Mobil Corporation, certifies that this brief contains 6,997 words, which complies with the word limit of Local Rule 11-6.1.

Dated: May 31, 2023

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